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State Test Preparation Course

# Chapter 14

## Uniform State Test

# Chapter Objectives

- Identify the elements that affect the Uniform State Test of the NMLS.
- Recognize the regulatory authority of federal and state mortgage entities.
- Recognize the definitions of components and concepts in the mortgage industry.
- Identify licensing laws and requirements that regulate MLOs and other mortgage professionals.
- Describe compliance conditions and practices that apply to the mortgage industry.

# HERA and the SAFE Act

- Housing and Economic Recovery Act of 2008 (HERA) constitutes a new housing law to assist with the recovery of America's residential housing market
- SAFE Act is a key component of HERA
  - Designed to enhance consumer protection and reduce fraud
  - Encourages states to establish state minimum standards for MLO state-licensing
  - Called for the establishment of a nationwide mortgage licensing system and registry

Public Law 110-289

## HERA and the SAFE Act (cont.)

- SAFE Act required states to have the licensing and registration system in place by:
  - July 31, 2009 for states whose legislatures meet annually
  - July 31, 2010 for states whose legislatures meet biennially
- A model state law (MSL) was developed and designed to assist states in the enactment of legislation on mortgage loan originator licensing.

# Uniform State Test

- **Uniform State Test (UST)**
  - New domain or section in the National Test
  - Consists of 25 questions—the National Test with Uniform State Content is now 125 questions
  - Measures the skill in understanding the Model State Law
  - Replaces the state-specific test components for the states that adopt it
- **Stand-alone UST**
  - Available for enrollment between April 1, 2013 and March 31, 2014 for those who passed the retired National Test
  - Has 25 scored questions on Uniform State Content, filling state testing requirements for states adopting the UST

## Title V—Secure and Fair Enforcement for Mortgage Licensing (SAFE Act) of 2008

- SAFE Act has jurisdiction in all states, as well as the U.S. Territories of Puerto Rico, U.S. Virgin Islands, and Guam<sup>1</sup>
- Mandates of Public Law 110-289:
  - **Industry:** All residential MLOs must be state-licensed or federally registered
  - **States:** Effective August 1, 2009, all states must have a system of licensing in place for residential MLOs that meets national definitions and minimum standards
  - All states must license MLOs through the NMLS

<sup>1</sup>12 CFR, 1026, § 1026.2(a)(26)

## 14.1 Knowledge Check 14-1

1. The SAFE Act requires all MLOs to be federally registered with the NMLS system.
  - A. true
  - B. false



## 14.1 Knowledge Check (cont.)

2. The SAFE Act established national minimum standards for prelicensing education and annual continuing education of MLOs.

- A. true
- B. false

# State Regulatory Authority Agencies

- May be referred to by a name similar to:
  - Department of Financial Institutions
  - Mortgage Regulatory Commission
  - Division of Banking

## State Regulatory Authority Responsibilities

*Minimum* requirements include:

- Providing effective supervision and enforcement of the law, (suspension, termination, etc.) for a violation of state or federal law<sup>1</sup>
- Ensuring all state-licensed MLOs operating in the state are registered with NMLS<sup>2</sup>
- Regularly report violations, as well as enforcement actions to the NMLS<sup>3</sup>

<sup>1</sup>12 CFR 1008, § 1008.111(a); <sup>2</sup>12 CFR 1008, § 1008.111(c);  
and <sup>3</sup>12 CFR 1008, § 1008.111(d)

## State Regulatory Authority Responsibilities (cont.)

- Having a process for challenging information in the NMLS<sup>4</sup>
- Having a mechanism to assess civil money penalties for individuals acting without a valid license or registration<sup>5</sup>
- Having an established minimum net worth or surety bonding requirement, or an established recovery fund paid into by MLOs<sup>6</sup>

<sup>4</sup>12 CFR 1008, § 1008.111(e); <sup>5</sup>12 CFR 1008, § 1008.111(b)(6);  
and <sup>6</sup>12 CFR 1008, § 1008.105(f)

## 14.2 Knowledge Check

1. Under the SAFE Act, the state regulatory authority is responsible for ensuring the proper and legal control of MLO licensing within the state.

- A. true
- B. false

## 14.2 Knowledge Check (cont.)

2. Which of the following is NOT a financial protection method required of states by the SAFE Act?

- A. federal fund
- B. minimum net worth
- C. state fund
- D. surety fund

# Broad Administrative Authority

State regulatory authorities must have an administrative authority to interpret, enforce, and administer, and make regulations implementing the SAFE Act

12 CFR 1008, § 1008.111(b)

# State Examination Authority

A state-licensing agency must have the authority to conduct investigations and examinations<sup>1</sup>

## Authority to Access Information

- For initial licensing and license maintenance, the state has access to all MLO or mortgage entity records.<sup>2</sup>
  - It is prohibited to destroy or alter these records.

## Investigation, Examination and Subpoena Authority

- State regulatory authorities may review, investigate, or examine any individual subject to the SAFE Act.<sup>3</sup>

## Reports and Other Information

- Individuals subject to the SAFE Act must make or compile reports as directed by state regulatory authority.<sup>4</sup>

<sup>1</sup>12 CFR 1008, § 1008.111(a)(4); <sup>2</sup>12 CFR 1008, § 1008.111(b)(1);

<sup>3</sup>12 CFR 1008, § 1008.111(b)(2); <sup>4</sup>12 CFR 1008, § 1008.111(b)(2)



# State Examination Authority (cont.)

## **Mortgage Call Reports**

- Each mortgage licensee must submit to the NMLS reports of condition, containing the required form and information.

## **Control of and Access to Records**

- In any examination or investigation authorized by the SAFE Act, the state regulatory authority may control access of any records of the person under examination.

# State Examination Authority (cont.)

## Additional Authority

- A state regulatory authority may:
  - Retain attorneys, accountants, etc. as investigators, examiners, or auditors to conduct examinations or investigations.

## Penalties

- May impose a civil penalty on a person subject to the SAFE Act, if a violation or failure to comply with the Act is found.
- **Maximum** amount of penalty for each act is **\$25,000**.
- Each violation or failure to comply with a directive of the state regulatory authority is **separate**.

12 CFR 1008, § 1008.113(a)(3)

## 14.3 Knowledge Check

The SAFE Act requires each state to control the mortgage lending industry by a system that issues, suspends, denies, or revokes the licenses of parties covered by the Act.

- A. true
- B. false

# State Department Obligations

- The state regulatory authority:
  - Must establish a process for MLOs to challenge information entered into the NMLS.
  - May set renewal or reporting dates.
  - Must establish requirements for amending, transferring, or surrendering a license.
- Fees to apply for or renew licenses may be remitted through the NMLS.

# Regulatory Authority Limitations

- State and federal regulating authorities do **not** have the authority to impose a prison sentence.
- MLOs, processors, and underwriters employed by credit unions and depository institutions are *not required* to be state licensed under the SAFE Act.
  - The exception requires employees be registered with the NMLS with an NMLS Unique Identifier.

12 CFR 1008, § 1008.103(e)(5)(6)

# CFPB Examinations

- An examiner for the CFPB may examine an MLO subject to a Bureau-established licensing system whenever the Bureau deems it necessary to determine compliance with the SAFE Act.
- The Bureau assesses the cost of conducting an examination of an MLO which may have to be paid by the MLO, the employing entity, or both.

# Fees

The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, or Bureau may charge fees for providing access to NMLS information.

# Prohibited Conduct and Practices

- Employ a scheme to defraud a person.
- Engage in unfair/deceptive practices toward a person.
- Obtain property by fraud or misrepresentation.
- Solicit or enter into a contract with a borrower that claims a person may earn a fee from “best efforts” to obtain a loan, even though no loan is attained.
- Solicit, advertise, or enter into a contract for specific interest rates, points, etc., unless the terms are available at the time of said actions.
- Conduct business covered by the SAFE Act without holding a valid license.
- Fail to make disclosures required by the SAFE Act.
- Fail to comply with Safe Act or state/federal agency regulations under the SAFE Act.



## Prohibited Conduct and Practices (cont.)

- Make any false or deceptive statement or representation with regard to the rates, points, or other financing terms for a residential mortgage loan or engage in bait and switch advertising.
- Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with information or reports filed with a governmental agency or the NMLS or with any investigation.
- Make any payment, threat or promise, to a person (or appraiser) for the purposes of influencing the judgment of the person (or appraiser) in connection with a residential mortgage loan (or with respect to the property's value).
- Actually or attempt to collect, charge, purpose, or use any agreement to collect/charge any fee prohibited by the Act.
- Cause a borrower to obtain property insurance coverage exceeding the improvement replacement costs.
- Fail to account for monies to a party to a residential mortgage loan transaction.

# Required Conduct

- The SAFE Act mandates an individual must be licensed as an MLO when:
  - Taking a loan application
  - Offering or negotiating loan terms
  - Receiving any “thing of value” for gain when acting as an MLO
  - Engaging in the business of an MLO with habitualness or repetition
  - Working as an independent contractor performing as a loan processor/underwriter engaged in the business of an MLO
  - Working as an attorney engaged in the business of an MLO

12 CFR 1008, § 1008.103(b)

## 14.4 Apply Your Knowledge

Identify for each task if an MLO's professional standing calls for License Required (**LR**) or No License Required (**NLR**):

1. Pass a Federal test with a 75% score.
2. Receive an application in the mail and forward the information without review.
3. Provide a set of fingerprints with license application.
4. Explain contents of an application to a borrower.
5. Describe loan application process to a borrower.
6. Demonstrate financial responsibility.
7. Arrange closing and other aspects of the mortgage process.
8. Seller who provides financing to homebuyers for three or fewer properties in a year.
9. Provide the borrowers an interest rate quote.

# Taking a Loan Application

Taking a residential mortgage loan application is:

Receipt by an individual, for the purpose of facilitating a decision whether to extend an offer of loan terms to a borrower or prospective borrower of an application as defined in Section 1008.23.

## Example #1:

- An individual “**takes a residential mortgage loan application,**” even if the individual:
  - Has received the borrower's request **indirectly.**

Section 1008.103(c)(1)

# Taking a Loan Application (cont.)

## Example #2:

- An individual “**takes a residential mortgage loan application,**” even if the individual:
  - Is not responsible for verifying information.

## Example #3:

- An individual “**takes a residential mortgage loan application,**” even if the individual:
  - Only inputs the information into an online application or other automated system; or
  - Is *not* involved in approval of the loan, including determining whether the consumer qualifies for the loan.

# Not Taking a Loan Application

- An individual does **not** take a loan application because the individual:
  - Receives a loan application in the mail and forwards it, without review, to loan approval personnel.
  - Explains the contents of the application
  - Generally describes the loan application process to a borrower.
  - Responds to an inquiry regarding a prequalified offer that a borrower has received from a lender.
  - Collects only basic identifying information about the borrower on behalf of that lender.

# Offering or Negotiating Loan Terms

## Required Conduct

Presenting a borrower particular loan terms for consideration, in any form, even if:

- Further verification of information is necessary.
- The offer is conditional.
- Other individuals must complete the loan process.
- The individual lacks authority to negotiate the interest rate.
- The individual lacks authority to bind the prospective financing source.

Section 1008.103(c)(2)

# Offering or Negotiating Loan Terms (cont.)

## Exempt Activities

- Providing general explanations in response to consumer queries
- Arranging the loan closing, provided that discussion about loan terms only verifies terms already agreed to by the borrower
- Providing a borrower with information unrelated to loan terms
- Making an underwriting decision about whether the borrower qualifies for a loan
- Explaining, in nonspecific terms, the steps a borrower needs to take in order to obtain a loan offer
- Communicating on behalf of an MLO that a written offer has been sent to a borrower without providing details
- Offering or negotiating loan terms through a third-party licensed MLO, so long as the non-licensed individual does not represent that he will perform covered activities or communicate with the borrower



# Compensation or Gain

## Required Conduct

- An individual acts “for compensation or gain” if they receive any “thing of value” in connection with the individual's activities.
  - The concept any “thing of value” is interpreted broadly and not limited to payments contingent upon loan closing

## Exempt Activities

- An individual does **not** act “for compensation or gain” if the individual acts as a volunteer, without receiving, or expecting to receive, a “thing of value.”

# Engaging in the Business of an MLO

## Required Conduct

An individual who acts as an MLO in a commercial context with habitualness or repetition is “engaged in the business of an MLO.”

- Commercial Context

- Individuals are acting as an MLO in a commercial context if they act for the purpose of obtaining any thing of value.

- Habitualness or Repetition

- The habitualness or repetition of the origination activities needed to “engage in the business of an MLO” may be met if the acting MLO acts with habitualness or repetition.

# Engaging in Business of MLO (cont.)

## Exempt Activities

1. An individual who acts infrequently as an MLO in providing financing for the sale of his own residence.<sup>1</sup>
2. An individual who acts infrequently as an MLO in providing financing for the sale of a property owned by that individual.
3. Parents acting as MLOs providing loan financing to their child.
4. An employee of a government entity acting as an MLO pursuant to his duties for the government entity.
5. An employee of a bona fide nonprofit organization, acting as an MLO pursuant to his duties for the organization.
6. An individual not acting as an MLO habitually, if the source of prospective financing does not provide mortgage financing.

112 CFR 1026, § 1026.36

# Loan Processing/Underwriting Activities

A **loan processor** or **underwriter** that must maintain a state MLO license includes:

- Any individual who engages in the business of an MLO.\*
- Any independent contractor who performs clerical or support duties.\*
- Any independent contractor who collects, receives, distributes, or analyzes information connected to making credit decisions.\*
- Any independent contractor connecting with consumers to obtain information necessary for making a credit decision.\*

\* As defined in the SAFE Act

## Loan Processing/Underwriting Activities (cont.)

A state is **not** required to impose SAFE Act licensing requirements on a loan processor or underwriter who:

- Performs only clerical or support duties at the direction of and under the supervision of a person licensed<sup>1</sup>; or not required to be licensed due to time-share, nonprofit, or government/federal employee exclusions<sup>2</sup>.
- Performs only clerical or support duties as an employee of a mortgage lender or brokerage firm and performs those duties at the direction of and subject to the supervision and instruction of an individual who is employed by the same employer and who is licensed.<sup>3</sup>

<sup>1</sup>12 CFR 1008, § 1008.103(a); <sup>2</sup>12 CFR 1008, § 1008.103(e)(2)(5)(6)(7);  
and <sup>3</sup>12 CFR 1008, § 1008.103(a)

## Loan Processing/Underwriting Activities (cont.)

- Is an employee of a loan processing or underwriting company that provides loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract , provided the employee only performs clerical duties under a licensed MLO employee' s supervision.
- Is an individual who does not otherwise perform the activities of an MLO and is not involved in the receipt, collection, distribution, or analysis of information for the loan processing or underwriting, nor is in communication with the consumer to obtain such information.

# Actual Nexus

- There must be an **actual nexus** between the licensed MLO's supervision/instruction and the underwriter or loan processor's activities for an individual performing supervised clerical duties.
- **This actual nexus must be more than a nominal relationship on an organizational chart.**
- There is an actual nexus when:
  - The licensed MLO assigns, authorizes, and monitors the loan processor or underwriter employee's clerical duties.
  - The supervisory licensed MLO exercises traditional supervisory responsibilities.

## 14.5 Knowledge Check

An individual who acts as an MLO in providing financing for the sale of her own residence would NOT require licensing as long as it is not a habitual and frequent activity.

- A. true
- B. false



# Other Circumstances

## Other Circumstances Requiring a State MLO License

- SAFE Act compliant licensing is required for licensed attorneys if they engage in the business of an MLO.<sup>1</sup>

## Other Circumstances NOT Requiring a State MLO License

- SAFE Act-compliant licensing is **not** required for a licensed attorney performing MLO-defined activities,<sup>2</sup> if they are:
  - Considered by the state's court of last resort to be part of the authorized practice of law within the state.
  - Carried out within an attorney-client relationship.
  - Accomplished by the attorney in compliance with all applicable laws, and standards.

<sup>1</sup>12 CFR 1008, Appendix D(a); <sup>2</sup>12 CFR 1008, Appendix D(b)

# Advertising

The unique identifier of a person originating a loan must be shown on **all** residential mortgage loan application forms, advertisements, etc.

## Prohibited Advertising Practices

- It is **prohibited** for an MLO to:
  - Solicit, advertise, or contract for specific interest rates, points, etc. *unless* the terms are available at the time of soliciting, advertising, or contracting.
  - Make any false or deceptive statement, optional add on, or engage in bait and switch advertising.

# Chapter Summary

1. The SAFE Act established national minimum standards for prelicensing, and annual continuing, education of MLOs.
2. All residential MLOs must be state-licensed or federally registered.
3. The regulatory authority agency for each state may be referred to by a name similar to one of the following:  
Department of Financial Institutions, Mortgage Regulatory Commission, or the Division of Banking.

# Chapter Summary (cont.)

4. *Minimum* requirements for each state MLO regulatory authority under the SAFE Act include:
  - a) *Supervision and enforcement of the law*
  - b) Ensure state loan originators are *registered* with the NMLS
  - c) *Report violations* to the NMLS
  - d) Have an appeals process
  - e) Establish a process for assessing civil money penalties and establish a fund to compensate consumers.
5. A state regulatory authority may issue orders to those subject to the SAFE Act to cease and desist from conducting business.

## Chapter Summary (cont.)

6. The state regulatory authority may impose a civil penalty on an MLO. The maximum penalty for each act is \$25,000.
7. The state regulatory authority may set the date of renewal dates; create requirements for amending or surrendering a license.
8. An individual acts “**for compensation or gain**” if the individual receives any “**thing of value.**” The concept “any thing of value” is interpreted broadly.
9. The unique identifier of any person originating a residential mortgage loan must be shown on **all** residential mortgage loan application forms, solicitations, or advertisements.

## Chapter Summary (cont.)

10. Licensing is not required for an attorney performing activities that come with the definition of MLO if ancillary to their practices.
11. MLOs must not solicit advertise, or enter into a contract for specific interest rates, points, etc. unless he is available at the time of soliciting, advertising, or contracting.
12. MLOs must not engage in bait and switch advertising.

# Chapter 14 Quiz

1. **Under the SAFE Act, the state regulatory authority is responsible for the following minimum requirements EXCEPT**
  - A. enforcement of SAFE Act regulations.
  - B. establishment of a monetary assessment penalty process for individuals who practice as MLOs without a license.
  - C. maintenance of records and enforcement of violations for public access.
  - D. registration of all MLOs with the NMLS.

# Chapter 14 Quiz

- 2. A mortgage broker may NOT be compensated for**
- A. participating in loan closing.
  - B. providing referrals.
  - C. taking applications.
  - D. verifying property information.



## Chapter 14 Quiz

- 3. Which of the following penalties is the state regulatory authority NOT allowed to administer?**
- A. civil sanction
  - B. license revocation
  - C. monetary payment
  - D. prison sentence

# Chapter 14 Quiz

- 4. An individual's act is "for compensation or gain" when that individual**
- A. achieves a profit (capital gain) from the transaction.
  - B. has ownership interest in the transaction.
  - C. is a W-2 employee.
  - D. receives something of value.

# Chapter 14 Quiz

## 5. Performing which task requires licensing?

- A. analyzing a loan application that is received from a consumer
- B. communicating details of a loan closing arrangement
- C. making an underwriting decision
- D. offering or negotiating loan terms

# Chapter 14 Quiz

- 6. Which is an example of “offering or negotiating the terms of a loan”?**
- A. communicating details of loan closing arrangements
  - B. communicating directly or indirectly with a borrower in order to reach a mutual understanding about prospective residential mortgage loan terms
  - C. describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer
  - D. providing general explanations or responses to consumer inquiries about loan programs